

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002678-MR

CHARLES CHUMBLER

APPELLANT

v. APPEAL FROM LIVINGSTON CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 91-CR-00025

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, EMBERTON AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE. Charles Chumbler (Chumbler) appeals from an order of the Livingston Circuit Court denying his Kentucky Rule of Criminal Procedure (RCr) 11.42 or Kentucky Rule of Civil Procedure (CR) 60.02 motion to vacate or set aside a judgment of conviction and sentence. Finding no error, we affirm.

Following the death of his wife, Nelda Chumbler, appellant was indicted for complicity to murder in January of 1991. A Livingston County jury found appellant guilty of complicity to murder. Following the jury's recommendation, the trial court sentenced appellant to a term of life without the

possibility of parole for twenty-five years. Appellant subsequently appealed his conviction to the Kentucky Supreme Court. In Chumbler v. Commonwealth, Ky., 905 S.W.2d 488 (1995), the Kentucky Supreme Court reversed appellant's conviction and remanded the case for retrial. The appellant subsequently entered a guilty plea to the charge of complicity to murder in exchange for the Commonwealth's recommendation of a life sentence. In April of 1996, the trial court sentenced appellant to life imprisonment in accordance with the Commonwealth's recommendation.

In February, 1999, appellant filed a motion to vacate judgment and conviction pursuant to CR 60.02 or RCr 11.42. The trial court denied appellant's motion, finding no error in the sentencing of the appellant to life imprisonment for the crime of complicity to murder. This appeal followed.

On appeal, appellant contends that the trial court improperly sentenced him to life imprisonment for the crime of complicity to murder. More specifically, appellant argues that the crime of complicity to murder should be classified as a Class B Felony under KRS 506.030(2)(b), criminal solicitation, thereby making the maximum available sentence twenty years. Appellant's argument relies wholly on his misinterpretation of a portion of the commentary to KRS 502.020, the complicity statute. The portion of the commentary to KRS 502.020, upon which the appellant relies, states:

"[T]he mere solicitation of an offense is punishable under KRS 506.030. This subsection [502.020(1)] serves to punish the solicitor as an "accomplice" if the

solicited offense is completed or attempted."
(Emphasis added)

Appellant contends that this portion of the commentary to KRS 502.020 makes one who solicits a murder that is subsequently completed or attempted subject to KRS 506.030, the criminal solicitation statute, rather than KRS 502.020, the complicity statute. We disagree.

The offenses of complicity and criminal solicitation are separate, independent offenses and the commentary to the complicity statute simply reflects this fact. The offense of criminal solicitation, intentionally encouraging another person to commit a crime, is punishable as an independent offense by KRS 506.030. Criminal solicitation is an inchoate offense in that it is intended to punish conduct that is preparatory to the commission of a substantive offense. For an individual to be guilty of criminal solicitation, the crime solicited need not actually be committed or attempted. Landrith v. Commonwealth, Ky. App., 709 S.W.2d 833 (1986). Rather, the defendant's culpability stems from his intentional act of encouraging another person to commit a crime, regardless of whether the crime solicited is ever committed or attempted by the individual solicited.

Just as its commentary unambiguously indicates, KRS 502.020, the complicity statute, is to be utilized to punish the solicitor as an "accomplice" where the offense solicited is actually attempted or completed by the solicitee. The complicity statute acts to extend criminal liability to persons other than those who actually engage in the specific conduct culminating in

particular crimes. KRS 502.020 will impute liability for an offense upon an individual who solicited the offense. It is not necessary for an individual who solicited an offense to be charged with criminal solicitation in order to be charged with complicity. The solicitation merely constitutes the factual basis supporting the agency relationship which imposes criminal liability upon the defendant for the conduct of his partners in crime. Tribbett v. Commonwealth, Ky., 561 S.W.2d 662 (1978).

When an individual is found guilty of complicity to a crime, he occupies the same status as one being guilty of the principle offense. Wilson v. Commonwealth, Ky., 601 S.W.2d 280 (1980). Appellant pled guilty to complicity to murder. As an accomplice to murder, appellant was subject to the same punishment as would be an individual found guilty of committing the murder. KRS 502.020. Murder is a capital offense; therefore, it was an acceptable disposition for the appellant to receive a life sentence. KRS 532.030(1).

Appellant also contends that he received ineffective assistance of counsel when his trial counsel advised him to accept the Commonwealth's offer of a life sentence for a guilty plea to the offense of complicity to murder. A claim for ineffective assistance of counsel, upon the entry of a guilty plea, requires the defendant to show both that his trial counsel's representation fell below an objective standard of reasonableness and that there exists a reasonable probability that were it not for his counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill v.

Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Appellant's argument for ineffective assistance of counsel is also based upon his contention that complicity to murder should be sentenced as a Class B Felony, thereby subjecting him to a maximum punishment of twenty years. Charged with complicity to murder, appellant was subject to the same punishment as the individual who actually committed the capital offense. KRS 502.020. With the appellant facing a capital offense, it was not ineffective assistance of counsel for trial counsel to advise him to consider a plea agreement with a life sentence. Appellant's claim for ineffective assistance of counsel must fail, as the appellant has made no showing of prejudicial error on the part of his trial counsel. Moreover, appellant was advised of the sentence prior to his signing of the plea agreement and subsequently voluntarily entered his plea of guilty.

For the foregoing reasons, the order of the Livingston Circuit Court denying appellant's CR 60.02 or RCr 11.42 motion is affirmed.

ALL CONCUR.

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